Sr. II 27—1M.968—4-11-49.

Food & Agri (1952) Department.

MS SERIES.

Pars

Supdt.

G.O. NO. 401

401

Dated 14-3-52

[Despatch Abstract.]

Subj - (South Kanara) Mangalore - Original Suit No 252/51 - Court of Sub-Judge, South Kanara, Mangalore - Claim by Sri Ganapathy Bhatta, South Kanara for damages - Defence of State of Madras - Sanctioned.

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FORTUNE 1345 : F/52

T2-Urgent

BOARD OF REVENUE (CIVIL SUPPLIES)
Present:

S.T2--(South Kanara) Mangalore--S.C.SC/47 on the file of the Sub-Judge, South Kanara--claim for compensation for damage in connection with accident relative to Civil Supplies Station Lorry No.M.C.3714--Defence--Request for sanction and approval of draft written statement--proposals--submitted.

Board's Ref.B1424/27/51 dated 2nd March, 1952.

...

From

Sri V. V. Subramanian, I.C.S.,
Commissioner of Civil Supplies, [illegible]

Sri S. Krishnamachari, B.A.,
State Road Transport Officer, Madras.

...

ASSISTANT SECRETARY
MAR 1952
13481
FOOD AND AGRICULTURE DEPT.

Ref: 1. From the Collector of South Kanara, Ref.No. [illegible] dated 10-8-51.
2. -do- A.S-SC73/51 dated 17-10-51.
3. -do- A.S-SC73/51 dated 20-11-51.
4. -do- A.S-SC73/51 dated 1-2-52.

The Board submits that on 6-9-50, the Civil Supplies station lorry No.M.C.3714 in South Kanara district reported to have met with an accident at Bangalore, and as a result of the accident, it was alleged that a cyclist sustained multiple injuries on his head and right hand. The driver of the Civil Supplies Station lorry (P.V.Ramiah) was prosecuted by the Police and charge sheeted before the Stationary Sub-Magistrate, Bangalore. The case was disposed of by the Stationary Sub Magistrate with the remark that the question as to whether the vehicle was driven by the accused driver in a rash and negligent manner was not free from doubt and he gave the benefit of doubt to the accused and acquitted him under Sec.258 Cr.P.C. A copy of the Judgment in C.C.No.1078/50 dated 12-11-51, which contains a full description as to how the accident took place etc., is enclosed. It was also reported by the Collector that the driver was kept under suspension with effect from 7-9-50 and subsequently was set free service.

2. When the criminal case against the driver was proceeding the Collector of South Kanara received a notice dated 7-9-50 from S.Ramasamayya, B.A., B.L., Vakil, Bangalore on behalf of Gunnath Bhatta, the cyclist who was involved in the accident, claiming the payment of compensation for injuries R.25,000/-. The Collector reported to the Board that he informed that on 6-9-50, he informed the notice-giver that the matter was receiving attention. The Collector further solicited instructions of the Board in the matter. Again, in his reference dated 20-11-51, the Collector reported to the Board that the party had filed a suit against the Government and it had been taken on file by the subordinate Judge, South Kanara as O.S.1078/51. He also furnished a copy of the plaint and requested instructions. He further reported that he had asked the Government Pleader, Mangalore to draft a written statement and that he would submit the same as soon as it was received from the Government Pleader, together with the connected records. In the absence of the connected records and as the result of criminal case against the driver was not known, the Board was unable to give any instructions in the matter to the Collector and he was asked to furnish a copy of the Judgment and the draft written statement together with the connected records.

3. The Collector in his ref.dated 1-2-52 submitted a copy of draft written statement along with connected records, and recommended to the Board, the request of the Government Pleader, South Kanara to engage a Junior Counsel for the reasons stated by him. Copies of Collector's letter dated 17-10-51 and the draft written statement, sent as enclosure to the Collector's letter dated 20-11-51 and his letter dated 1-2-52 together with copies of draft written

written statement and copy of the letter dated 22-1-52 from the Government Pleader,South Kanara to the Collector of South Kanara are submitted to the Government.

4. In the circumstances, reported by the Collector, the Board requests that Government may be pleased to accord sanction for the defence of the suit mentioned above. The Board also recommends that permission may be accorded for the engagement of a Junior Counsel as proposed by him.

5. In regard to the draft written statement, the Board feels that paras 1-4, 6 to 9 in the draft written statement proposed by the Government Pleader are in order, but in regard to para 5, the Board considers that the draft written statement particularly the first sentence which implies the admission of rash and negligent driving, does not appear to be necessary, in as much as from the Judgment of Stationary Sub Magistrate, Mangalore, it does not appear that the damage was due to rash and negligent driving of the driver.

6. The following records received with Collector's letter dated 1-2-52 are submitted to the Government.

(Z) —— 1) Records D.Dis.4185/50.
2) " D.Dis.20642/51.
(L) —— 3) Third Party Insurance Certificate in
(K) —— respect of Station Wagon MDC.9714.

7. The Board requests very early orders of the Government in the matter.

S. Krishnamurthi
5/3/52
STATE ROAD TRANSPORT OFFICER

To
The Secretary to the Government,
Food and Agriculture Department,
Fort St. George, Madras. (WITH ENCLS. 9/18 pages)

Copy to Collector of South Kanara.

kvk.3.3.52/

Copy of letter No. C No. A 3 20673/51 from the Collector of South Kanara to the Secretary to the Commissioner of Civil Supplies, dated 17.10.51.

Sub:- SUIT NOTICE- (South Kanara)- Mangalore City- Station Waggon accident- Compensation for damages- Claim.

I enclose a copy of the suit notice issued to me on behalf of one Sri. Ganapathi Bhatta of Bavar village in this District. The notice-giver claims a sum of Rs. 25,000/- from Government as compensation for the alleged damages caused to him by the alleged rash and negligent driving of station- waggon No. M.S.C. 9714 belonging to the Civil Supplies Department of the Government.

2. The notice is a sequel to an accident which happened in Mangalore on 5.8.1950 and in which station waggon M.S.C. 9714 of the Civil Supplies Department of this District was involved The notice-giver was the victim in the accident. The driver of the vehicle was one K.J. [illegible] whose services were since been terminated. A detailed version of the accident as gathered from the eye-witnesses examined by the Police has been submitted to the Board in my Ref A.2 20642/50 dated 10-8-1950 I invite a reference to that report and Board's Ref No. 114248/Z1/50 dated 21.9.1950 and L.Dis. 4342/Z1/51 dated 31.1.51.

3. The notice-giver claims compensation from the Government on the ground that the state as the master of the driver who caused the mishap, and, as owner of the vehicle, is bound in law to pay damages for the pain and suffering undergone by him, for the injuries substained by him, etc,., etc.,;

4. The Government Pleader who was consulted in the matter is of opinion that the State Cannot be held responsible for the tort committed by its servants. He also says that the servant himself was not guilty of the tort complained; and that the quantum of compensation claimed is excessive.

5. A complaint has already been filed against the driver before the Sty. Sub Magistrate, Mangalore and it is pending as C.C.1078/50 on his file.

6. As Government vehicles are exempt from third party insurance, only a certificate in form "C" prescribed in Rule 12 of the Motor Vehicles Rules, 1946 has been maintained.

7. In G.O. Ms No. 2320, Home, dated 7.6.1949, the Government have laid down the procedure to be adopted to settle claims arising out of accidents in which the Government owned vehicles are involved. According to this G.O. a report is required to be sent to the Regional Transport Officer, or the Deputy Commissioner of Police, Traffic and Licensing bringing the full facts of the case. That Officer will address the "Authorised Officer" to settle the claims) So far as the Civil Supplies Department vehicles are concerned, the Commissioner of Civil Supplies has been authorised to settle claims up to a limit of Rs.1000/- vide G.O.Ms No. 1726 Food and Agriculture dated 29.12.1949. The provisions of G.O No.2320 Home dated 7.6.1949 however provide that each involved department should endeavour to reach a settlement with the aggrieved party out of court, and, if this is not possible, the party should be allowed to proceed against the driver in a Civil Court, the Government undertaking to honour the decree. The party in this case claims compensation of Rs.25,000/- The vehicle involved in this case is a Civil Supplies Department Vehicle and the maximum compensation payable by the Commissioner of Civil Supplies is Rs. 1000/- Nevertheless, I had the party contacted to negotiate for a settlement out of court. But the party is reported to be unwilling to come to a settlement.

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8. In the circumstances, I solicit instructions whether in view of the large sums claimed, the matter may be left to the decision of the Court in case the party chooses to proceed against the Government.

9. On 8-9-1951 I have informed the notice-giver that the matter is receiving my attention.

/True Copy/

4/3/52

Kannan
Superintendent.

5

Copy of letter No. nil from Sri Narasappa a B.A. B.L., Vakil, Bangalore to the District Collector of South Kanara.

I have been instructed by Sri Ganapathi Bhatta, son of Tantri Narayana Bhatta, residing at Kaniyala of Bayar Village of Kasaragod taluq to issue the following notice to you.

That as a result of rash and negligent driving by the driver of the station waggon M.S.C. 9714 belonging to the Civil Supplies Department of the Government of Madras on 5.8.1950 at about 11 a.m. My client was knocked down on the Kadri Road near P.V.S. Beedi Factory and has sustained serious injuries- two on the head, one on the face, one on the left hand, two on the left elbow and one on the left thigh. There have been multiple fractures of the skull bone and as a result of the grievous hurt caused to him he was not only an impatient in the Government Wenlock Hospital for over 2½ months, and though after 2½ months he was removed to his house he was directed to take complete rest by lying down and not move about and is at present an invalid ever since confined to the house. During a period of over 5 months, not only has my client suffered great pain discomfort and suffering but for some time he was in critical danger of his life and his life was despaired of. He was completely unconcious for about 12 hours. As a result of the injuries sustained on the head, he is even now not his old self and his right hand is even now partially paralytic having lost all sensation and he is not able to talk properly because one side of his face has also been affected by partial paralysis. My client is a young man aged about 20 years who has appeared for the Intermediate Examination of the Madras University.

As a result of the accident and the injuries sustained thereby his whole future is blasted. He will never again be his old self, nor will he be able to undertake any responsible or arduous task in life, nor will he be able to earn his livelihood decently and properly as befits his position and status in life. He had to give up his education and even now he is an invalid, confined to home and is expected to be so, all his life.

As stated above the cause of his injury is entirely the rash and negligent driving by the driver of the vehicle which is owned by the State Government. As such the State Government, the master of the driver who negligently drove and caused the accident, and as the owner of the vehicle, is bound in law and pay my client damages for the pain and suffering undergone by him, for the injuries sustained by him for the blasting of his entire future life, besides the vast expenses he had to incur for the treatment and he is even now incurring for the same.

My client comes of a very respectable family and his father pays an assessmet of over Rs.250/- getting an annual income of over Rs. 15000/- per year. My client estimates the damages caused to him at a modest sum of Rs. 25,000/- and requests and hereby demands of the State Government to pay the same to him within a week of the receipt of this notice failing which my client will be constrained to file a suit for the recovery of the said amount.

K

This notice is issued to you under section 80 of the C.P.C. The name and description and place of residence of the plaintiff is K. Ganapathi Bhatta, son of Tantri Narayana Bhatta, aged about 20 years, Brahmin Land Holder, residing at Kaniyala of Bayar Village, Kasaragod taluk. The relief claimed is the payment of a sum of =Rs 25000/- as stated above as damages for the various injuries caused to him, suffering, pain and danger to life and limb, undergone by him and expenses already incurred and which is being incurred now for his treatment on account of the injuries sustained by him due to rash and negligent driving of the driver of the vehicle M.S.C 9714 owned by the Government of Madras on 5.8.1950 in Mangalore town in Kadri Road, at Shedigudda, Near pu tu

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Vaikunta Shet's Beedi Factory. The cause of action arose on 5.8.1950 in Mangalore Town where the injuries were caused as stated above.

As stated above the young Man's whole future is blasted and my client feels sure that the Government of Madras will not disown their liability or shirk their responsibility and refuse to pay the modest sum demanded. In the case the Government fail to pay the sum claimed as above my client will be constrained to file a suit for recovery of the said amount at the risk of the Government for all costs and expenses thereof.

(True copy)

4/3/52

Ramaiah

Solicitor

I

IN THE HIGH COURT OF the SUBORDINATE JUDGE OF SOUTH KANARA

Original Suit 252 of 1957

Between :

Ganapathi Bhatta — Plaintiff

and

1. The State of Madras
2. K.V. Ramayan. — Defendants.

Plaint under section 26 Order VII Rule 1 of C.P.C.

The Plaintiff begs to state as follows:-

1. That the plaintiff is the son of Pantri Narayana Bhatta aged about 20 years, Brahmin, Landholder, residing at Kunival of Bayar village of Kasaragod taluk. His address for service is as above.

2. That the 1st defendant is the State of Madras and notice of this suit may be served on Government Pleader Mangalore. The 2nd Defendant is a Motor Driver, whose father's name is not known and whose address is care of Collectorate Mangalore.

3. (1) On 5.8.50 at about 11 A.M. while the plaintiff was going on a bicycle along the public Kadri Road in Mangalore Town opposite the P.V.S. Beedi Factory he was knocked down by the Motor Vehicle Popularly known as Station wagon bearing the Registration No. M.S.C. 9714 and belonging to the 1st Defendant, which was being driven by the 2nd defendant.

(2) The plaintiff was riding along the proper side of the road and was knocked down entirely due to the rash Negligent and wrongful driving of the said motor vehicle by its driver K.V. Ramayan the 2nd defendant. As a result of dashing of the motor vehicle against the plaintiff, the plaintiff was not only knocked down on the road, but also sustained serious injuries two on the head, one on the face, one on the left hand, two on the left elbow and one on the left thigh. Further there has been multiple fractures of the skull bones.

3.) As a result the various serious injuries caused to him the plaintiff was an inpatient in the Government Wenlock Hospital for over 2½ months from the date of injury and though after 2½ months he was removed to his house, the plaintiff was directed to take complete rest by lying down and not move about and is even now an invalid confined to the house.

4.) During the period the plaintiff was in the hospital and even thereafter, in all for about 5 months, the plaintiff suffered great pain and discomfort and for some time he was in a critical condition, in danger of his life, and as matter of fact his life was desperate and it was doubtful whether he would survive. The plaintiff for a period of about 12 hours after the accident was completely unconscious.

5.) The plaintiff further submits that as a result of the injuries of the head, his right hand is partially paralysed, having lost all sensation and he is also not able to talk properly because of one side of his face also has been affected by partial paralysis. The plaintiff as the result of the shock and injuries sustained by him, is not his old self and it is almost certain that he would never again be his old self. The plaintiff who has appeared for the Intermediate Examination of the Madras University had to discontinue his studies and is invalidated at home.

6.) As a result of the injuries sustained by him the plaintiff besides suffering great shock, great pain for a fairly long period being in critical danger of his life had to spend

contd.....

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considerable sums of money for his treatment and is even now spending for the same. His whole future is blasted as owing to his present physical condition as a result of the injuries he will not be fit or able to undertake any responsible or arduous task in life nor will he be able to earn his livelihood decently and properly as befits his position and status in life, nor fit himself to be a useful member of society. The plaintiff had to even discontinue his studies and his whole life is wrecked and throughout his life, he will be an invalid unfit for any responsibility in life.

7. As stated above the cause of the injuries was entirely the rash and negligent driving by the driver of the motor vehicle the 2nd defendant K.V. Ramayya. The motor vehicle belongs to and is owned by the 1st defendant and the 1st defendant as the master of the driver the 2nd defendant who negligently drove and caused the accident and as the owner of the vehicle is bound in law to pay plaintiff adequate damages for the injuries sustained by him for the shock pain suffering and danger under gone by him for the vast expense incurred by him for treatment and for the blasting of his whole future, life, The 2nd defendant is jointly liable as the person who drove the vehicle in a rash and negligent manner and caused injuries.

8. Against the 2nd defendant K.V. Ramayyan for his criminal act of rash and negligent driving a criminal prosecution has been instituted by the State. Charges have been framed against him and the case C.C. 1078/50 is pending against him before the II Class Magistrate, Mangalore..

9. The plaintiff comes of a very respectable family paying an assessment of Rs. 250/- over to Government and getting an annual income of Rs. 150000/- per year. The plaintiff estimates the damages under the various heads mentioned in para 7 above at a modest sum of Rs. 25000/- The plaintiff though in fact entitled to much more, restricts his claim to this sum and claims the same from the defendants.

10. The plaintiff issued to 1st defendant a registered notice dated 25.7.51 fulfilling the requirement laid down under section 80 of the C.P.C. The District Collector of S. Kanara to whom it was sent on behalf of the defendant and served on 26.7.51 has received the same and except pending a reply stating that the matter is receiving attention has not paid the amount claimed or done anything in the matter. Hence the plaintiff is constrained to file this suit for necessary reliefs.

11. The statutory notice as required under section 80 of the C.P.C. has been given and this suit is filed only after the expiry of 2 months as laid down by law.

12. The course of action for this suit arose on and since 5.8.50 in Mangalore Town within the jurisdiction of this court here the plaintiff sustained the injuries. This suit is not barred by limitation as the period of two months after the issue of the statutory notice has to be excluded in computing the period of limitation and section 15(2) of the Indian Limitation Act.

4. The value of the reliefs sought in this suit is Rs. 25000/- and a court fee of Rs. 1312-7-0 is paid thereon under section 7(1) article 1 schedule I of the Court Fees Act.

5. The plaintiff therefore prays for a decree and judgment in his favour against the defendants jointly and severally.

(a) Directing defendants to pay plaintiff the sum of Rs. 25000/- as damages for the shock, pain, suffering and danger undergone by him, for the expenses incurred by him for the permanent disability and disfiguration caused to him and for the blasting of his future life as a result of the injuries sustained by him due to the rash

and negligent driving by the 2nd defendant of the Motor vehicle MSC 9714 belonging to the 1st Defendant . Rs. 25000/-

B. For costs of this suit and granting such other or further reliefs as the Court deems fit to grant under the circumstances of the case.

/True copy/

(Sd) x x x
Vakil for Plaintiff

I do hereby declare that the facts stated above are true to my knowledge

Plaintiff

Mangalore
3rd October 1951.

(True Copy)

4/3/52

Copy of Ref No. C 43 20673/51 dated 1.2.52 from the Collector of South Kanara to the Secretary to the Commissioner of Civil Supplies.

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Sub: Ref No.ICD- S. Kanara -Mangalore City-Station-wagon accident compensation for damages-claim suit in C.C. 259/51 in the file of the sub Judge South Kanara.

Ref: Board's Ref No. 114248/ZX1/50 dated 17.1.52.

In continuation of my report Ref C. No. 43 20673/51 dated 20.11.51 I submit herewith a draft written statement for favour of approval The facts of the case have already been explained in my report Ref C No. 43 20673/51 dt. 17.10.51 A copy of the judgment in C.C. 1078/50 on the file of the S.D.M. Mangalore is also submitted herewith.

2. The suit has been valued at Rs. 25,000/- The Government Pleader, Mangalore has therefore requested for permission to engage a junior counsel to appear in this case. He has suggested that Sri K. Padman Bhat Holla, Advocate of Mangalore may be permitted to appear as junior counsel A copy of Government Pleader's letter No.40/52 dated 23.1.52 is enclosed for information.

3. The case was posted to 31.1.52 for filing the written statement The Government pleader however has promised to obtain an adjournment on that date.

4. I request that the defence of the suit may be sanctioned. Sanction may also be accorded to engage a junior counsel in this case and Sri K. Padmanabha Holla, Advocate may be permitted to appear on behalf of the Government.

1. The following records are enclosed.

1. Records of D.Dis. 4185/50
2. Records of D.Dis. 20642/50
3. Third party Insurance Certificate in respect of station waggon MSC 9714.

/True Copy/

Stamped

IN THE DISTRICT OF [illegible] SUBORDINATE JUDGE OF BATTICALOA

C.R. No. 282/1951

Between

S. Mapathi Ahamadu.....Plaintiff

and

1. The Attorney General of Ceylon
2. K.V. Ramayya

(1) Defendants.

Written statement of the 1st Defendant under Order VIII Rule 1 C.P.C.

1. The plaint claim is unsustained in law.

2. The allegations in plaint para III(1) to III(6) are not admitted. The plaintiff will have to strictly prove the same. They are within the special knowledge of the plaintiff and he will have to establish the same.

3. The defendant does not admit that the injuries sustained by the plaintiff were due to the rash and negligent driving of the 2nd defendant. The plaintiff will have to prove the same. Under any circumstances, there was contributory negligence on the part of the plaintiff.

4. This defendant admits that the motor vehicle concerned in the accident was driven by the 2nd defendant belongs to this defendant.

5. This defendant denies that the alleged rash and negligent act of the 2nd defendant if any. The State is not responsible for tortious acts committed by its servants, nor is it liable to pay any damages for the acts of omission and commission of its servants.

6. The allegations in para III (8) of the plaintiff are admitted. But the accused has been acquitted in the said case.

7. The allegations in para III (9) are not admitted. The same will have to be proved by the plaintiff. Under any circumstances the claim for damages is excessive and out of all proportions, to the injuries suffered.

8. The defendant admits the issue of the registered noticed ~~xxxxxxx~~ mentioned in para III (10) of the plaint, but after due enquiry of the same has been recorded.

9. In conclusion this defendant prays that the suit may be dismissed with the cost of this defendant.

Dated -1-1952

1st Defendant.

I, hereby declare that the facts stated above are true to the best of my knowledge.

Dated -1-1952

1st Defendant.

ksr-

(True Copy)

4/3/52

Kannan

Secretary

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Copy of the letter Ref. No. 40/52 dated 23-1-52 from the Government Pleader and Public Prosecutor, to the Collector of South Kanara, Mangalore.

Sub:- O.S.252/51 on the file of the Sub Judge - accidents - Station Wagon accident in Mangalore - suit by Ganapathi Bhat against State of Madras another - written statement enclosed.

Ref:- Ref. No. Endorsement M.Ref.C.No.A3.20673/51 dated 20-1-51.

I beg to enclose herewith a draft written statement prepared in the case. Please approve of the same and send it back after duly signing and verifying the same. The suit is for damages to the tune of Rs.25000/-. As the suit is a very complicated one and involves entricate questions of law and fact, it is better to at the services of a junior advocate in the case are engaged. The Civil Rules of Practice also require that in all cases when the valuation is over Rs.5,000/- a junior advocate must be engaged. It is obligatory I would recommend Sri B.Padmanabha Holla, Advocate, K.S.Rao Road, Mangalore to be taken as junior advocate. This has to be done before the filing of the statement and he must put in his appearance on behalf of the Government before that date. Hence I would request you to give permission to him to appear in before our statement is filed. The case stands posted to 31-1-52 for the written Statement of the Government. I shall take a short adjournment on that date. Please see that the written statement reaches me at an early date.

/True copy/

4/3/52

For Collector.

S. Kamath

C.C.No.1078/50.

JUDGMENT.

The accused K.V.Ramayya is charged by the S.I. of Police, Mangalore North station with an offence under Section 338 I.P.C. in that he on 5-8-50 drove station waggon M.S.C. 9714 in a rash and negligent manner at Shedigudde near P.V.S.Beedi factory and knocked down P.W. 1 Ganapaty Bhat causing him grievous hurt.

2. Seven witnesses were examined for the prosecution and the prosecution story is as follows:--

P.W.1 Ganapathy Bhat who is a student and P.W. 4 Vishweshara Rao a clerk in the Dt. Police Office were going on hired cycles at about 11 A.M. on 5-8-50 along the Public road from Kadri to Shedigudde side from east to west P.W.1 was going in front and P.W.4 was following him a few yards behind. When P.W.1 reached opposite the P.V.Beedi Factory gate, Government station waggon M.S.C.9714 driven by the accused came at a great speed from the opposite direction and the side of the bumper dashed against the front fork of the cycle. P.W.1 lost his balance and fell against the side of the waggon and in doing so he dashed against the handle of the shutter near the drivers seat and he fell on the tarred road on his left side. P.W.1 sustained a number of injuries as result of his fall and was profusely bleeding and bent out of shape and the dynam light was broken. Persons including P.W.s.2, 3 and 4 gathered there. The station waggon did not stop after the accident but proceeded along the road at the same speed. P.W.3 then clapped his hands and the accused stopped the vehicle at a distance of 87 feet from the place of accident and came down. P.W.1 was then taken to the Government hospital in the city bus by P.W.4 and treated for his injuries. P.W.4 phoned to the S.I.(P.W.6) and the police came to the hospital. P.W.4 gave a written complaint Ex.P.1 and this was registered as crime No.210/50 of Mangalore North Station and investigated by P.W.6. P.W.6 proceeded to the spot and prepared an observation yadash Ex.P.3 seized the bloodstained clothes and cap M.O.s 1 and 5 and the cycles M.O.4 and broken dynamo light M.O.6 and after examining the witnesses P.W.6 submitted a report to the District Magistrate and obtained sanction to prosecute the accused as per Ex.P.4, P.W.6 also sent a requisition to the M.V.Inspector (P.W.5) on 5-8-50 and the M. V.Inspector examined the vehicle at the place of accident at 12-15 P.M. on 5-8-50 and sent his report Ex.P.2. P.W.5 found no damages on the vehicle and he tested the brakes and found the efficiency at 60% of 20 miles per hour laden with four persons and the stopping distance 32 feet. The road at the place of accident is a straight level and tarred road running from east to west. The P.V.Beedi Factory opposite which the accident took place is on the northern side of the road and on the opposite side about 50 yards to the west is the Mahatma Restaurant. P.W.1 stated that the station waggon was coming at great speed when he saw it and that he was riding on the left side of the road about 1½ feet from the edge of the tarred road. P.W.2 K.S.Rai stated that while he was coming out of the Mahatma Restaurant he saw the Station Waggon coming at a great speed and he went on observing the vehicle which was being driven on the Mahatma Restaurant side of the road i.e. on the wrong side of the road. Then P.W.2 saw P.W.1 coming on a bicycle towards the west. P.W.1 was keeping to his left side about 3 feet from the edge of the tarred road on his left side. P. W.2 saw the right side of the bumper of the station waggon striking the front fork of the cycle and P.W.1 falling down attended on P.W.1 and took him to the hospital P.W.3 stated that he was walking along the pavement when P.W.1 who was coming along the edge of the road passed him on his cycle and/afterwards P.W.3 heard the noise of a dash from behind and on turning back he saw P.W.1 fallen from his cycle. There were no other vehicles on the road at that time and the road was also crowded with pedestrians. P.W.7 the doctor who examined P.W.1 in the hospital and issued the wound certificate Ex.P.5 stated that the injuries Nos. 1 and 2 mentioned in Ex.P.5 are grievous.

3. The accused when questioned stated that he was keeping to his side when he drove the vehicle that day and that he was called and stopped when he reached a spot 70 feet from the place where P.W.1 had fallen. He saw P.W.1 fallen on the road and there were two cycles which had fallen on the road. One cycle was lying in the middle of the road. The accused also stated that he had not driven the vehicle carelessly that day. As charge under section 338 I.P.C. was framed against the accused and read over and explained to the accused. He pleaded not guilty to the charge. The witnesses were further cross examined and no defence witnesses were examined.

4. P.W.3's evidence is that after P.W.1's cycle passed him he heard the noise of the dash and turned back and saw P.W.1 fallen on the road. P.W.3 was going to the east and he was walking on the foot path at that time. In his examination in chief he has stated that the vehicle came to his side and he got

frightened and went to his extreme right side and that he saw P.W.1 coming on the cycle about ½ furlong ahead keeping to the extreme southern edge of the road, and that he heard the noise of the dash after P.W.1 passed him. In his further cross examination he denied that he looked back on hearing the noise made by the dash and he first saw P.W.1 coming opposite to him at a distance of 10 marus and that after proceeding one maru he turned back to see why P.W.1 had gone touching him and then he saw P.W.1 fallen on the road. It is evident from the evidence of P.W.3 that he has been saying a lot of things from his imagination only and I find that no reliance can be placed on his evidence as to whether the accused was driving the vehicle carelessly on the wrong side when the accident took place.

6. It is contended on behalf of the prosecution that P.Ws 2 and 4 who are disinterested persons and who have actually seen the accident have stated categorically that P.W.1 was keeping to his left side near the edge of the tarred road when the station waggon dashed against the cycle and that this is clear evidence to show that the accused drove the vehicle in a rash and negligent manner on the wrong side without keeping the left side of the road. The report Ex.P.2 of P.W.5 and the observation yadast Ex.P.3 show that there was a blood mark on the tarred road 11' 4" from its northern side. The width of the tarred road according to Ex.P.2 and P.3 is only 21' 4". It is contended on behalf of the accused that this blood mark found in the middle of the road in a careless manner and not on the extreme left side of the road when the accident took place. According to P.W.1 after the right side of the bumper dashed against the shutter handle of the vehicle and then he fell on the tarred road on his left side. The injuries which are mostly on his left side also go to show that he fell on his left side P.W.4 has stated in Ex.P.1 that P.W.1 was bleeding profusely and he was lying curled up just in front of the gate of the P.V.S. building, when P.W.4 got down from his cycle and went to help him. The blood marks in the middle of the road would indicate that the accused fell down there and that the accident took place in the middle of the road and not on the northern side of the road as stated by P.W.'s. P.W.2 has also admitted in his further cross examination that he cannot say whether P.W.1 lost control of his cycle on seeing the vehicle coming and fell off the cycle and came into contact with the side of the van. In any case the question as to whether the vehicle was driven rashly and negligently by the accused on the wrong side of the road resulting in the accident is not free from doubt and I give the benefit of the doubt to the accused and acquit him under Section 258(1) Cr.P.C. & M.Os 1 to 3 and 5 which are blood stained clothes will be destroyed and M.O's 4 and 6 will be returned to P.W.1.

⊗ would clearly show that P.W.1 was going along the middle of the road

Pronounced in open court.

sd. M.S.Menon.
10-11-51 S.S.M.Mangalore.

APPENDIX.

Witnesses examined for prosecution.

1. Sri Ganapathy Bhat.
2. Sri K.S.Rai.
3. Subba Bhandary.
4. Vishweshwar Rao.
5. Janab C.K.Mahim.
6. B.Ramanna Shetty.
7. Dr. H.Manjunath.

Witnesses examined for defence: Nil.

Exhibits marked for prosecution.

Ex. P. 1 Complaint dated 5-8-50 laid by P.W.4.
Ex.P.2 true copy of the report of P.W.5.
Ex.P.3, Observation yadast dated 5-8-50.
Ex.P.4, Dt. Magistrate's order M.L.Dis 7097/50 dated 7-9-50.
Ex.P.5, sound certificate.

14

Ex.D1. Certain portion of writings in Ex.P.1.

Material objects marked.

M.O.1 Blood stained waisti.
M.O.2 Blood stained towel.
M.O.3 shirt.
M.O.4 Cycle.
M.O.5 Cap.
M.O.6 Dynamo light.

sd. M.S.Menon.
Stn. Sub Magistrate, dt. 19-11-51.

/True copy/

16/11/51

Kannan
5 Exhibits

FOOD & AGRI.(F).DEPT.

Sub: SUITS - (South Kanara) Mangalore - Original Suit No.252/51 - Court of Sub-Judge, South Kanara, Mangalore - Claim by Sri Ganapathy Bhatta, South Kanara for damages - Defence of State of Madras - Sanctioned.

Read: From the Bd. of Rev. (C.S.) Ref.No.114248/Z1/50 dated 3.3.52.

G.O.(Ms.) NO. 401 DATED 14 - 3 - 1952.

H.E. the Governor of Madras sanctions the defence of the State of Madras, defendant 1 in the Original Suit No.252 of 1951 on the file of the Court of the Subordinate Judge of South Kanara, Mangalore.

2. The Govt. Pleader, South Kanara, is requested to appear on behalf of the 1st defendant in the above suit.

3. Sanction is also accorded to the engagement of a Junior Counsel by the Govt. Pleader, South Kanara, to assist him in the defence of the suit.

4. The draft written statement as approved by Govt. is enclosed.

5. The Bd. of Rev. (C.S.) is requested to take necessary steps in the matter and report the result of the suit in due course.

6. The following original records of the Collr. of South Kanara received with the reference read above are herewith returned to the Bd.:-

(1) D.Dis. 4185/50.
(2) D.Dis. 20642/51.
(3) D.Dis.25873/49. (Third Party Insurance Certificate in respect of Station Wagon MSC.9714).

The Board is requested to acknowledge their receipt.

To
The Bd. of Rev.(C.S.).
(With encls.in orgl.)
The Collr. of S.Kanara.
Copy to Govt. Pleader, S.Kanara through the Collr.of S.Kanara.
Copy to the A.G. through Fin.
" to the Legal Dept.

P.T.O.

As revised by LEGAL.

IN THE COURT OF THE SUBORDINATE JUDGE OF SOUTH KANARA

O.S.No.252/1951

Between

Ganapathi Bhatta .....Plaintiff

and

1. The State of Madras
2. K.V.Ramayya

Defendants.

Written statement of the 1st Defendant under Order VIII, Rule 1, C.P.C.

1. The reliefs claimed in the plaint are unsustainable in law.

2. The allegations in paragraph 3(1) to (6) of the plaint are not admitted. The plaintiff will have to strictly prove them. They are within the special knowledge of the plaintiff and it is for him to establish them.

3. The defendant does not admit that the injuries sustained by the plaintiff were due to the rash and negligent driving of the 2nd defendant. The plaintiff will have to prove it. In any case, there was contributory negligence on the part of the plaintiff.

4. This defendant admits that the motor vehicle concerned in the accident and driven by the 2nd defendant belongs to this defendant.

5. Even assuming that the 2nd defendant acted rashly and negligently, this defendant cannot be rendered legally liable therefor. The State is not responsible for the tortuous acts committed by its servants, nor is it liable to pay any damages for the acts of omission and commission of its servants.

6. The allegations in paragraph 3(8) of the plaint are admitted. But the accused has been acquitted in the said case.

7. The allegations in paragraph 3(9) of the plaint are not admitted. The same will have to be proved by the plaintiff. Under any circumstances, the claim for damages is excessive and out of all proportion to the injuries alleged to be suffered by the plaintiff.

8. The defendant admits the receipt of the registered notice mentioned in paragraph 3(10) of the plaint; after due enquiry, the same was recorded.

P.T.O.

C F 25

Board of Revenue (Civil Supplies)

Subject:

SUITS - (South Kanara) Mangalore - Original suit No.252/51 - Court of Sub-Judge South Kanara, Mangalore - Claim by Sri Ganapathy Bhatta, South Kanara for damages, 2 Defences of State of Madras - Sanctioned - G.O. and enclosures - Acknowledged -

- -

Board's Ref.11424 /41(1)50.(CS) dated 15.3.52.

From

M 16840

Sri M. V. Subramanian, I. C. S.,
Commissioner of Civil Supplies.

Sri S. Krishnamachari, B.A.,
State Road Transport Officer.

ASSISTANT SECRETARY
18 MAR 1952
FOOD AND AGRICULTURE DEPARTMENT

Read: 1. Board's Ref.No.114248/41(1)50(CS) dated 3.3.52;
2. Government Food & Agriculture Department G.O.Ms.No.401/ dated 14.3.52.

16710

The Board acknowledges the three enclosures sent with the G.O.Ms.401 dated 14.3.52.

S. Krishnamachari
17/3/52
STATE ROAD TRANSPORT OFFICER

To
The Secretary to Government,
Food & Agriculture Department,
Madras.

Mitta16iii52:

CW 1348/F/52

Food & Agriculture (F).

SUB: Suits - South Kanara - Mangalore - O.S. No.252/51 on the file of the Subordinate Judge, South Kanara - C.S. Station Waggon accident - Compensation for damages - Claim-~~xx~~ by Sri Ganapathi Bhatta, South Kanara - Defence of the State of Madras - Sanction - Board's proposals.

Ref: From the Bd. of Rev. (C.S.) ~~xxxxx~~ Ref.No.114248/Z1/50 dated 3.3.52.

--

To A.S.

The case deals with the following proposals of the Bd. of Rev. (C.S.).

(1) to accord sanction to the defence of the State of Madras (first defendant) in the suit O.S.No.252/51 filed by Sri Ganapathi Bhatta of South Kanara in the Subordinate Court of S. Kanara at Mangalore claiming damages to the tune of Rs.25,000/- for having been knocked down at Mangalore town by C.S. Station Waggon M.S.C.9714 on 5.8.50; and

(2) to permit the engagement of a junior counsel by the Govt. Pleader, Mangalore, who will enter appearance for defence of the suit under reference.

Item (1) above: The case has been set out in brief by the Bd. at pp.1-2 c.f. The Plaint and the draft written statement prepared by the Govt. Pleader, Mangalore, are at pp.7-9 c.f. and p.13 c.f. Particular attention is invited to para 5 of the Board's reference at p.2 c.f. wherein it considers that the draft written statement is generally in order, though there is no need for the inclusion of para 5 therein. In the circumstances stated by the Board, the draft written statement may ~~therefore~~ be approved subject to the ~~xxxxx~~ advice of Legal on the Board's suggestion at 'A' above and the Bd.'s proposal to sanction the defence of the suit under reference approved.

Item (2) above. This has been proposed by the Govt. Pleader himself as the value of the suit is over Rs.5,000/- and the suit involves intricate points of law - Vide p.15 c.f. As the Board recommends this, this proposal may also perhaps be approved. For orders.

P.T.O.

2

Subject to orders, a draft order is submitted for approval. The file may be sent to Home, Finance and Legal Departments for acceptance of the draft order below. Legal (courts) may be requested to advise whether the draft written statement is in order and also on 'A' at p.1 above.

6.3.52 6.3.52

6/3/52 6.3.52

Secy / Home

Fin

Legal (courts)

F/Hqrs No 13401 F/52-1.

6.3.52

40703 6/3/52.

Home (Sch. III) Sept.

Kept at 5.45 PM by 6/3/52

The 7.2 Agr. sept note at pp. 1-2 above and the draft order below may be perused and the court passed on to Hqrs.

7/3/52

7-3-52

7/3/52

Fin.

Home No 40703C/Sch III/52-1 7.3.52.

Fin (PWR)

Please see the note of F&A on pp 1-2 above. The draft order may be accepted

7/3/52

7.3.52 Legal (Courts)

1637 & PWR 52-1

7 MAR 1952

FINANCE DEPARTMENT

ASSISTANT SECRETARY 7 MAR 1952 5-30 PM LEGAL DEPARTMENT

Legal (Courts)Department.

This Department has indicated some alterations in pencil on the draft order. This Department has also indicated some alterations in pencil on the draft written statement at page 13 c.f.

2. The first sentence in paragraph 5 of the draft written statement as amended by this Department, embodies a very necessary plea. That sentence should therefore be retained in the written statement.

3. Two clean copies of the draft written statement as modified in this Department are placed in the file.

13/3/52 13/3 Food & Agri

Legal.No.3448/52

D.13.3.52

ADDITIONAL ASSISTANT SECRETARY 14 MAR 1952 F FOOD AND AGRICULTURE DEPT.

15866

Food & Agri (F)

The notes of Home, Finance and Legal Deptts. at Pp. 2-3 above may be perused. The alterations indicated by Legal on the draft Written Statement at Pp. 13 c.f., a clean copy of which is put up at flag (X) may be accepted. A draft order as revised by Legal is submitted for appl.

For orders whether it may now issue.

May issue

14/3/52 14/3/52 14/3/52

14352

Issued as GO Ms No 401 Dated 14.3.52

(From the Bd. of Rev (CS) Ref no 11424/21(1)/SD
dated 15/3/52)

p 25 C/L

20/3 The Bd. of Rev (CS) has acknowledged the receipt of the original records mentioned at M on p. 21 C/L No further action appears pending in this file. The papers may now be closed after making a C/S entry against S. 7-52; for watching the Bd's Refs. for order.

21.3.52

23/3/52

23/3/52

Sent to C/S 5th
p 21 C/L
Ref No 113
27/3/52

Kan(C) 5

IN THE COURT OF THE SUBORDINATE JUDGE OF SOUTH KANARA

As revised
by LEGAL.

O.S.No.252/1951

Between

Ganapathi Bhatta .....Plaintiff

and

1. The State of Madras
2. K.V.Ramayya ..... Defendants.

Written statement of the 1st Defendant under Order VIII Rule 1 C.P.C.

1. The reliefs claimed in the plaint are unsustainable in law.

2. The allegations in paragraph 3(1) to (6) of the plaint are not admitted. The plaintiff will have to strictly prove them. They are within the special knowledge of the plaintiff and it is for him to establish them.

3. The defendant does not admit that the injuries sustained by the plaintiff were due to the rash and negligent driving of the 2nd defendant. The plaintiff will have to prove it. In any case, there was contributory negligence on the part of the plaintiff.

4. This defendant admits that the motor vehicle concerned in the accident and driven by the 2nd defendant belongs to this defendant.

5. Even assuming that the 2nd defendant acted rashly and negligently, this defendant cannot be rendered legally liable therefor. The State is not responsible for the tortuous acts committed by its servants, nor is it liable to pay any damages for the acts of omission and commission of its servants.

6. The allegations in paragraph 3(8) of the plaint are admitted. But the accused has been acquitted in the said case

7. The allegations in paragraph 3(9) of the plaint are not admitted. The same will have to be proved by the plaintiff. Under any circum tances, the claim for damages is excessive and out of all proportion to the injuries alleged to be suffered by the plaintiff.

8. The defendant admits the receipt of the registered notice mentioned in paragraph 3(10) of the plaint; after due enquiry, the same was recorded.

P. T.o

6

9. This defendant prays that the suit may be dismissed with the costs of this defendant.

Dated -1952.

1st Defendant.

I, hereby declare that the facts stated above are true to the best of my knowledge.

Dated 1952.

1st Defendant.

Food & Agri.(F).

Sub: Suits - (South Kanara) Mangalore - O.S.No. 252/51 - Court of Sub-Judge, S. Kanara, Mangalore - Claim by Sri Ganapathy Bhatta, S. Kanara for damages - Defence of State of Madras.- Sanctioned.

Read:- From the Bd. of Rev. (C.S.) Ref.No.114248/Z1/50 dated 3.3.52.

G.O.MS.NO. DATED 1952.

H.E. the Governor of Madras sanctions the defence of the State of Madras at public expense in the original Suit No.252 of 1951 on the file of the Subordinate Judge of S. Kanara, Mangalore.

2. The draft written statement prepared by the Govt. Pleader, Mangalore, (South Kanara) a copy of which is enclosed with the Board's reference read above is approved

3. Sanction is also accorded to the engagement of a Junior Counsel by the Govt. Pleader, Mangalore to assist him in the Defence of the suit.

4. The Board of Revenue (C.S.). is requested to take necessary steps to defend the suit and report the result of the same in due course.

6.3.52

6.3.52

To

The Bd. of Rev. (C.S.)
The A.G. Madras through Fin.
The Legal Department.
The Home Department.
Copy to S.F.
S.C.

6.3.52

6.3.52. The following original records of the Collr. of S. Kanara received with the reference read above are hereunto returned to the Board. H.E. & the Board is requested to acknowledge their receipt.

(1) D. Dis. 4185/50.
(2) D. Dis 20642/57.
(3) D. Dis 25873/49.

(Third Party Insurance Certificate in respect of Station Wagon MSC. 9714.)

6/7/52